

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Northland Cable Television, Inc.
Petition for Extension of Special Relief
CSR 5846-D

MEMORANDUM OPINION AND ORDER

Adopted: July 5, 2002

Released: July 9, 2002

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Herein we address a petition for extension of special relief ("Petition") in which Northland Cable Television, Inc. ("Northland" or "Petitioner") seeks an extension of a waiver of the Commission's rules to enable Northland to continue to establish regulated cable rates on behalf of its Aiken, South Carolina system...

2. Section 623(i) of the Communications Act of 1934, as amended ("Communications Act"), requires that the Commission design rate regulations in such a way as to reduce administrative burdens and compliance costs for cable systems with 1,000 or fewer subscribers.

1 The communities in the Aiken, South Carolina system and the related community unit identifiers ("CUIDs") are Aiken (SC-0009), Burnetown (SC-0255), Jackson (SC-0262), New Ellenton (SC-0263), Aiken County Uninc. (SC-0112), Aiken County Uninc. (SC-0360), Aiken County Uninc. (SC-0408), Oakhill (SC-0264), and Talatha (SC-0265).

2 The small system cost-of-service methodology was adopted in the Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995) ("Small System Order").

3 See Northland Cable Television, Inc., 15 FCC Rcd 2076 (2000) ("Northland Order").

4 47 U.S.C. § 543(i).

burdens for these smaller systems.<sup>5</sup> In the *Small System Order*, the Commission further extended small system rate relief to certain systems that exceed the 1,000-subscriber standard.<sup>6</sup> These systems were deemed eligible for small system rate relief because they were found to face higher costs and other burdens disproportionate to their size.<sup>7</sup>

3. The *Small System Order* defines a small system as any system that serves 15,000 or fewer subscribers.<sup>8</sup> The Commission recognized that systems with no more than 15,000 subscribers were qualitatively different from larger systems with respect to a number of characteristics, including: (1) average monthly regulated revenues per channel per subscriber; (2) average number of subscribers per mile; and (3) average annual premium revenues per subscriber.<sup>9</sup> The magnitude of the differences between the two classes of systems as to these characteristics indicated that the 15,000 subscriber threshold was the appropriate point of demarcation for purposes of providing for substantive and procedural regulatory relief.<sup>10</sup>

4. Most forms of rate relief provided under the *Small System Order* and the Commission's rules are available only to those small systems that are owned by a small cable company. A small cable company is defined as serving a total of 400,000 or fewer subscribers over all of its systems.<sup>11</sup> The Commission adopted this threshold because it roughly corresponded to \$100 million in annual regulated revenues, a standard the Commission has used in other contexts to identify smaller entities deserving of relaxed regulatory treatment.<sup>12</sup> The Commission found that cable companies exceeding this threshold would have less difficulty attracting the financing and investment necessary to maintain and improve service than would smaller companies.<sup>13</sup> In addition, the Commission determined that cable companies that exceeded the small company definition "are better able to absorb the costs and burdens of regulation

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<sup>5</sup> See, e.g., *Report and Order and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 5631 (1993); *Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking*, 9 FCC Rcd 4119 (1994); *Fifth Order on Reconsideration and Further Notice of Proposed Rulemaking*, 9 FCC Rcd 5327 (1994); *Eighth Order on Reconsideration*, 10 FCC Rcd 5179 (1995).

<sup>6</sup> *Small System Order*, 10 FCC Rcd at 7406.

<sup>7</sup> *Id.* at 7407. In 1996, Congress amended Section 623 of the Communications Act to allow greater deregulation for "small cable operators," defined as operators that "directly or through an affiliate, [serve] in the aggregate fewer than 1 percent of all subscribers in the United States and [are] not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, Communications Act, § 623(m), 47 U.S.C. § 543(m). Pursuant to this amendment, the rate regulation requirements of Sections 623(a), (b) and (c) do not apply to a small cable operator with respect to "(A) cable programming services, or (B) a basic service tier that was the only service tier subject to regulation as of December 31, 1994," in areas where the operator serves 50,000 or fewer subscribers. See 47 C.F.R. §§ 76.901(f); 76.990.

<sup>8</sup> *Small System Order*, 10 FCC Rcd at 7406. See 47 C.F.R. §§ 76.901(c); 76.934.

<sup>9</sup> *Id.* at 7408.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* A small system is deemed affiliated with a larger cable company if the company "holds more than a 20 percent equity interest (active or passive) in the system or exercises *de jure* control (such as through a general partnership or majority voting shareholder interest)." *Id.* at 7412-13, n.88. See 47 C.F.R. §§ 76.901(e); 76.934.

<sup>12</sup> *Id.* at 7409-11.

<sup>13</sup> *Id.* at 7411.

due to their expanded administrative and technical resources."<sup>14</sup>

5. In addition to adopting these categories of small systems and small cable companies, the *Small System Order* introduced a form of rate regulation known as the small system cost-of-service methodology.<sup>15</sup> This approach, which is available only to small systems owned by small cable companies, is more streamlined than the standard cost-of-service methodology available to cable operators generally. In addition, the small system rules differ substantively from the standard cost-of-service rules, allowing for the proportionately higher costs of providing service faced by small systems. Eligible systems establish their rates under this methodology by completing and filing FCC Form 1230. In order to qualify for the regulatory relief afforded by the small system cost-of-service methodology, systems and companies must meet the size standards as of either the effective date of the *Small System Order* or, thereafter, on the filing date of the documents necessary to elect such relief.<sup>16</sup>

6. Cable systems that fail to meet the numerical definition of a small system, or whose operators do not qualify as small cable companies, may submit petitions for special relief requesting that the Commission grant a waiver of its rules to enable the systems to utilize the various forms of rate relief available to small systems owned by small cable companies.<sup>17</sup> The Commission stated that petitioners should demonstrate that they "share relevant characteristics with qualifying systems."<sup>18</sup> Other potentially pertinent factors include "the degree by which the system fails to satisfy either or both definitions, whether the system recently has been the subject of an acquisition or other transaction that substantially reduced its size or that of its operator, and evidence of increased costs (e.g., lack of programming or equipment discounts) faced by the operator."<sup>19</sup> If the system fails to qualify for relief based on its affiliation with a larger cable company, the Commission will consider "the degree to which that affiliation exceeds our affiliation standards, and whether other attributes of the system warrant that it be treated as a small system notwithstanding the percentage ownership of the affiliate."<sup>20</sup> The Commission specifically stated that this list of relevant factors was not exclusive and invited petitioners to support their petitions with any other information and arguments they deemed relevant.<sup>21</sup>

## II. THE PETITION

7. The Commission granted the original waiver in the *Northland Order* for a period of two years beginning January 31, 2000.<sup>22</sup> Petitioner seeks an extension of that waiver and states that Northland's Aiken system continues to exhibit the characteristics for which the Commission established a

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<sup>14</sup> *Id.* at 7409.

<sup>15</sup> *Id.* at 7418-28.

<sup>16</sup> *Id.* at 7412-13.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *See* n. 3, *supra*.

special relief mechanism to extend application of small system rate relief.<sup>23</sup> Petitioner states that Northland has 241,615 subscribers, which qualifies Northland as a “small cable company” as defined in the *Small System Order*.<sup>24</sup> Petitioner states further that its Aiken system serves 16,527 subscribers, which is 1,527 more than the 15,000 limit for a “small system” as that term is defined in the *Small System Order*.<sup>25</sup> Petitioner argues that its Aiken system should qualify for special relief, in part because Northland easily meets the small cable company definition and the Aiken system only slightly exceeds the 15,000 small system subscriber cap, and also because the Aiken system continues to exhibit other characteristics the Commission has recognized as relevant to the extension of small system eligibility.<sup>26</sup> Petitioner also states that the public policy goals underlying the *Small System Order*, as well as considerations of basic fairness, compel an extension of the waiver.<sup>27</sup>

8. Petitioner provides information in support of its assertion that its Aiken system shares relevant characteristics with qualifying small systems. First, Petitioner asserts the Aiken system has monthly regulated revenue per channel per subscriber which resembles that of a small system.<sup>28</sup> The system averages \$0.63 per channel per subscriber, which is between the average figures for small systems (\$0.86) and large systems (\$0.44). The Aiken system’s current figure is nearly identical to the per channel per subscriber figure of \$0.64 maintained by the Aiken system at the time Northland petitioned for the original waiver.<sup>29</sup>

9. Second, Petitioner states that the Aiken system’s average number of subscribers per mile resembles that of a small system.<sup>30</sup> The system has an average of just 24.6 subscribers per mile, which is considerably less than the average for small systems (35.3) and nowhere near the average for large systems (68.7). At the time Northland petitioned for the original waiver, the Aiken system had 24.3 subscribers per mile.<sup>31</sup>

10. Third, Petitioner states that the Aiken system’s average annual premium revenue per subscriber resembles that of a small system.<sup>32</sup> The system has an average annual premium revenue of \$33.60. Again, this figure is less than the average premium revenue for small systems (\$41.00) and is nowhere near the figure for large systems (\$73.13). The current annual premium revenue remains close to the \$32.58 in premium revenue realized by the Aiken system at the time Northland petitioned for the original waiver.<sup>33</sup>

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<sup>23</sup> Petition at 2.

<sup>24</sup> *Id.* This number of subscribers and other measurements submitted by Petitioner were as of October 31, 2001.

<sup>25</sup> *Small System Order*, 10 FCC Rcd at 7406.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 4.

<sup>29</sup> *Northland Order*, 15 FCC Rcd at 2079.

<sup>30</sup> Petition at 5.

<sup>31</sup> *Northland Order*, 15 FCC Rcd at 2079.

<sup>32</sup> Petition at 5.

<sup>33</sup> *Northland Order*, 15 FCC Rcd at 2079.

11. Petitioner further asserts that, while the Aiken system has gained approximately 900 subscribers since the filing of the petition seeking the original waiver, the system's growth rate suggests that the system will remain small.<sup>34</sup>

12. Finally, Petitioner argues that a grant of the requested rate relief would serve the public interest by protecting a small, independent cable operator from the "substantial hardships" of traditional rate regulation, thereby enabling it to continue to provide top quality service to consumers.<sup>35</sup> Petitioner also states that it does its best to minimize costs, but it cannot achieve economies of scale comparable to larger systems in the areas of equipment purchasing, system maintenance, and program acquisition.<sup>36</sup>

### III. DISCUSSION

13. The Commission adopted the 15,000 subscriber threshold for small systems "on the basis of shared economic, physical, and financial characteristics" for any systems at or below that size.<sup>37</sup> Based on the available data, the Commission found that systems with fewer than 15,000 subscribers differ from systems with more than 15,000 subscribers with respect to the following characteristics:

- a) the average monthly regulated revenue per channel per subscriber is \$0.86 for systems with fewer than 15,000 subscribers and \$0.44 for systems with more than 15,000 subscribers;
- b) the average number of subscribers per mile is 35.3 for systems with fewer than 15,000 subscribers and 68.7 for systems with more than 15,000 subscribers; and
- c) the average annual premium revenue per subscriber is \$41.00 for systems with fewer than 15,000 subscribers and \$73.13 for systems with more than 15,000 subscribers.<sup>38</sup>

14. As noted above, Northland falls below the 400,000 subscriber threshold for small cable companies, but its Aiken system slightly exceeds the 15,000 subscriber cap for small cable systems. Although the system only exceeds the cap by a small amount, the degree by which a system exceeds the cap is not the only factor to be considered in a special relief case.

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<sup>34</sup> Petition at 6.

<sup>35</sup> *Id.* at 7.

<sup>36</sup> *Id.*

<sup>37</sup> *Small System Order*, 10 FCC Rcd at 7408.

<sup>38</sup> *Id.* These figures reflect the Commission's compiled data categorizing systems with greater and fewer than 15,000 subscribers.

15. We also examine whether the petitioning company has demonstrated that its system shares relevant characteristics with other small cable systems.<sup>39</sup> Petitioner states that the Aiken system averages 24.6 subscribers per mile. This figure is significantly less than the 68.7 subscriber-per-mile average for systems with more than 15,000 subscribers, and is considerably less than the 35.3 subscriber-per-mile average for small systems. In addition, the Aiken system's average annual premium revenue per subscriber is \$33.60, also below the small system average of \$41.00 per subscriber and far below the average premium revenue for a large system of \$73.13 per subscriber. Finally, Petitioner concedes that, at \$0.63, the Aiken system's average monthly regulated revenue per channel per subscriber falls between that of small systems (\$0.86) and that of systems with more than 15,000 subscribers (\$0.44). However, given the totality of the circumstances, we find that Northland has demonstrated that its Aiken system resembles a small system according to most of the applicable criteria.

16. Under Section 76.7(c)(1) of the Commission's rules, a petition for special relief "shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest."<sup>40</sup> Northland has adequately established the Aiken system's "need for the relief requested" as required by Section 76.7(c)(1). In making this finding, we note that the Commission's decision to target relief to small systems owned by operators with fewer than 400,000 subscribers was based on a recognition that the then-existing rate rules did not sufficiently take into account the higher costs of business faced by smaller companies.<sup>41</sup> In addition, the Commission acknowledged that qualifying systems and companies were in need of relief from the procedural burdens imposed upon such entities by the other forms of rate regulation.<sup>42</sup> The Commission found that alleviating the substantive and procedural burdens associated with the standard benchmark and cost-of-service methodologies "should free up resources that affected operators currently devote to complying with existing regulations and should enhance those operators' ability to attract capital, thus enabling them to achieve the goals of Congress," as set forth in the Cable Television Consumer Protection and Competition Act of 1992.<sup>43</sup> Given that we have found that the Aiken system is entitled to small system treatment, granting the Petition will serve the congressional goals identified in the *Small System Order* and will thus be in the public interest.

#### IV. SCOPE OF THE WAIVER

17. We next must determine the scope of the waiver. The Aiken system already exceeds 15,000 subscribers, and it is reasonable to presume that the system will continue to grow. There is no obvious alternative subscriber limit which, if exceeded, should result in the loss of Aiken's ability to make small system rate adjustments. Therefore, we will place a limit on the duration of this waiver. In the absence of a limit on the waiver's duration, the system would enjoy small system status indefinitely, regardless of its eventual size. Such a result would be inconsistent with the goal of creating rate

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<sup>39</sup> *Id.* at 7412-13.

<sup>40</sup> 47 C.F.R. § 76.7(c) (1).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 7407, citing the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460.

regulatory relief for systems that need such relief due to their relatively small subscriber base.

21. Therefore, we conclude that the Aiken waiver will terminate four years from the date of this order, unless extended further, subject to the conditions set forth below. We believe the four-year limit will afford Aiken adequate regulatory certainty for the foreseeable future, while ensuring that the system is not permitted to charge rates indefinitely under a scheme designed for smaller systems. Previous orders granting small systems waivers have granted those waivers for a two-year period.<sup>44</sup> We believe a longer waiver period is appropriate here. Very little change, beyond some subscriber growth, has occurred in the critical characteristics of the Aiken system since we issued the original waiver. We see no reason to require Northland, or others similarly situated, to file petitions seeking special relief any more than necessary. If Aiken's critical characteristics have undergone little further change at the expiration of the four-year period, Northland may seek another finding of continued eligibility for small system treatment by filing another petition for relief with the Commission.

22. Any Form 1230 filed for the Aiken system must be submitted with the appropriate regulatory authorities within four years of the date of this order. In any franchise area where the system is currently subject to regulation, Aiken may reestablish its maximum permitted rates by filing Form 1230 at any time in the next four years. Where the system is not currently subject to regulation but, within the next four years, becomes subject to regulation, Aiken may file Form 1230 within the usual response time.<sup>45</sup>

23. After filing Form 1230 and providing the requisite 30 days' notice for rate increases, Aiken may set its rate at any level that does not exceed the maximum rate generated by the form, subject to the standard rate review process.<sup>46</sup> Subsequent increases (also not to exceed the maximum rate established by Form 1230) shall be permitted upon 30 days' notice, but are not subject to further regulatory review.<sup>47</sup> If Aiken reaches the maximum rate established by Form 1230, and subsequently wishes to raise rates further, it must justify the rate increase in accordance with our standard benchmark or cost-of-service rules.

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<sup>44</sup> See, e.g., *Northland Cable Television, Inc.*, 15 FCC Rcd 2076 (2000); *Mid-Hudson Cablevision*, 12 FCC Rcd 11,496 (1997); *Inter Mountain Cable, Inc.*, 11 FCC Rcd 7081 (1996).

<sup>45</sup> See 47 C.F.R. § 76.934 (c)(3).

<sup>46</sup> Upon the filing of Form 1230, the Commission's rules permitting a certified local franchising authority to review the proposed rates, to request additional information, and to toll the effective date of the proposed rates, will then apply. See *Small System Order* at 7425; see also 47 C.F.R. Part 76, Subpart T (Notices); 47 U.S.C. § 552.

<sup>47</sup> *Small System Order*, 10 FCC Rcd at 7426. Under the small system rules, rate increases taken after the initial Form 1230 has been approved are not subject to further regulatory review, so long as the rate is no higher than the initial Form 1230's maximum permitted rate. *Id.*

**V. ORDERING CLAUSES**

24. Accordingly, IT IS ORDERED that the Petition for Extension of Special Relief filed by Northland Cable Television, Inc., requesting a waiver of the Commission rules defining systems subject to small system rate relief, IS GRANTED, with respect to its Aiken system for a period of four years.

25. This action is taken pursuant to delegated authority under Section 0.283 of the Commission's rules.<sup>48</sup>

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Media Bureau

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<sup>48</sup> 47 C.F.R. § 0.283.